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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

HILL RHF HOUSING PARTNERS, L.P.; OLIVE RHF HOUSING PARTNER, L.P.,

Petitioners/Plaintiffs,

vs.

CITY OF LOS ANGELES *et al*,

Respondents/Defendants.

CASE NO.: BS138416

OPPOSITION TO MOTION TO ENTER JUDGMENT; REQUEST FOR ATTORNEYS FEES

Date: January 31, 2018
Time: 9:30 a.m.
Place: Dept. 86

Complaint filed: July 18, 2012

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MEMORANDUM OF POINTS AND AUTHORITIES

Petitioners Hill RHF Housing Partners, L.P., and Olive RHF Housing Partners, L.P. ("Petitioners") seek to force the City of Los Angeles ("City" or "Respondent") to pay assessments for the Downtown Center Business Improvement District that will begin operations on January 1, 2018 (the "2018 DCBID"). The 2018 DCBID is a special assessment district established by City Council ordinance on June 7, 2017, to provide special services to and for property owners in the DCBID area. The 2018 DCBID will assess property owners for the costs of these services. Petitioners filed a lawsuit (BS170127) to contest this DCBID, but also contend the City is obliged to pay such assessments under the settlement of this matter, Case No. BS138416 (the "earlier litigation").

The earlier litigation addresses the Downtown Center Business Improvement District that began operations on January 1, 2013 (the "2013 DCBID"). The 2013 DCBID was established on June 19, 2012, and provided similar services to those the 2018 DCBID will provide. In the Settlement Agreement resolving this earlier litigation the City agreed to pay the assessments relating to "the DCBID adopted by ordinance of the City Council on June 19, 2012." (Exhibit 1, Settlement Agreement and Release, at ¶¶ 2 and 6.) This raises two issues: (1) whether the Settlement Agreement is ambiguous and if so how to interpret it; and (2) whether the 2018 DCBID's assessments fall within the meaning of the assessments subject to the Settlement Agreement.

The Settlement Agreement itself seems clear and unambiguous. It concerns the "DCBID, adopted by ordinance of the City Council on June 19, 2012." (Settlement Agreement at ¶¶ 2 and 6.) It required the City to satisfy assessments "set forth in an Engineer's Report and a District Management Plan which are attached to the Petition for Peremptory Writ of Mandate . . . on which this matter is based [i.e., the 2012 Engineer's Report (Exhibit 8) and 2012 Management District Plan (Exhibit F]." (Settlement Agreement at ¶ 2.) The City agreed to satisfy assessments made with respect to "the DCBID." (Settlement Agreement Term 1(a)(ii).) These terms do not seem ambiguous or to require interpretation by extrinsic evidence.

As for the second issue, Petitioners bear the burden of proving that the assessments for the 2018 DCBID fall within the settlement agreement and utterly fail. The 2018 DCBID was adopted by City Council on June 7, 2017, and so is not the "DCBID" addressed by the Settlement Agreement.

(Exhibit G). Likewise, the 2018 DCBID's assessments are not set forth in the Engineer's Report or the District Management plan attached to the Petitioner for Peremptory Writ, which address only assessments between January 1, 2013, and December 31, 2017. (Exhibits 8 and F.) Therefore, Petitioners are not entitled to any relief; the agreement does not apply to assessments by the 2018 DCBID.

Petitioners argue that agreement should be construed to apply to the 2018 DCBID because the 2018 DCBID only "renews" the earlier DCBID, which "continues" in its "current formulation." But this language, from Paragraph Five of the Settlement Agreement, is completely irrelevant. The 2018 DCBID was **not** adopted by City ordinance on June 19, 2012, regardless of whether it "renewed" the 2013 DCBID. Thus, the 2018 DCBID's "formulation" matters not at all to Respondent's obligations under the Settlement Agreement. Moreover, the Court would have to ignore the language regarding the 2012 Engineer's Report and District Plan to resolve this in Petitioner's favor.

Furthermore, the evidence shows that the 2018 DCBID does not "continue" or "renew" the 2013 DCBID, but the 1997 DCBID. The 2018 DCBID "renews" and "continues" a line of DCBIDs that started no later than 1997, should one look at these BIDs as "continuing" the way Petitioners do. By carving out the DCBID adopted on June 19, 2012, the Settlement Agreement explicitly, clearly, and unambiguously designated only one of the many past and future DCBIDS. In any event, "renewed" BIDS are completely new and distinct entities from the expired BID.

Petitioners' other arguments lead nowhere. Petitioners argue that the 2013 DCBID continues in its "current formulation" because its services continue, but that is irrelevant. The City's obligation to pay Petitioners' assessments lasts only so long as does the DCBID adopted by ordinance on June 19, 2012. The 2018 DCBID's formulation cannot change the fact that it was **not** adopted by Council on June 19, 2012, and that its assessments were **not** described in the 2012 District Plan and the 2012 Engineer's Report.

Similarly, Petitioners argue for a number of reasons that the agreement is ambiguous and an "objectively reasonable" person would think the "current formulation" language meant that the City agreed to pay DCBID assessments forever. This strains credibility even if the agreement did not explicitly state otherwise. If so, the Settlement Agreement would have provided far more relief than

Petitioners possibly could have obtained from litigation. No reasonable person would think that the City would concede not just the issues set forth in the earlier lawsuit, but that no BID could ever assess Petitioners' property. In any event, the 2018 DCBID does use a different formulation than the 2013 DCBID, and so this language provides no help to Petitioners.

The Settlement Agreement should be applied as it was written. The City agreed to pay Petitioners' assessments from the 2013 DCBID and no more, and has fully satisfied those obligations. Moreover, the City is entitled to its attorneys fees and costs of at least $16,406.25 in this matter under Section (h) of the Settlement Agreement because it will be the prevailing party in this matter.

I. RELEVANT FACTS

A. HISTORY OF THE VARIOUS DCBIDS.

A Downtown Center Business Improvement District has existed since at least 1997, when one was created by an ordinance adopted by the City Council on July 22, 1997. (*See* Exhibit A to Declaration of Daniel M. Whitley.) That 1997 DCBID continued operations under its initial five-year term until its successor was created by the City Council, and something named the DCBID has continued providing similar services since 1997. (Declaration of Daniel M. Whitley, ¶ 3.) On or about July 8, 2006, the predecessor to the 2013 DCBID was created after an ordinance to that effect was adopted by the City Council. (*See* Exhibit D to Declaration of Daniel M. Whitley.) On June 19, 2012, the 2013 DCBID itself was adopted by ordinance of the City Council. (*See* Exhibit 1, Recital ¶¶ 1-5.) On or about June 7, 2017, the 2018 DCBID was adopted by ordinance of the City Council. (*See* Exhibit F). All of these BIDS were referred to as "renewals" of the Downtown Center Business Improvement District. (*See* Exhibits B, C, E, and G.)

All of the DCBIDs have provided similar services (i.e., safety, cleaning, and district identity/marketing services, as well as administrative upkeep), and until the most recent had similar formulations and methodologies for assessing the costs of special benefits. (*See* Exhibits 1, 3, A, B and C.) The 2018 DCBID determined and calculated a general benefit that will not be paid by assessees. (*See* Exhibit 9). The City itself will be paying for the amounts determined to be general benefits, with only the costs of special benefits paid by the assessed properties.

B. THE LITIGATION AND SETTLEMENT.

Petitioners filed suit seeking various relief related to the 2013 DCBID. Petitioners made four basic claims: (1) the BID failed to show how various properties benefited from the BID's services; (2) the BID failed to determine a general benefit from its services; (3) the BID made assessments based on its budget, not the cost of the services; and (4) Petitioners deserved special treatment because they were a non-profit business. (*See* Motion at p.1-2.) The parties agreed to settle the matter according to the terms of a Settlement Agreement. (Exhibit 1.) In this agreement the City agreed to make Petitioners whole for any assessments made by the 2013 DCBID. (Exhibit 1.) The City complied with all the terms of the agreement throughout the life of the 2013 DCBID. (Declaration of Daniel M. Whitley at ¶ 2.)

II. THE SETTLEMENT AGREEMENT ONLY APPLIED TO THE 2013 DCBID, WHICH HAS EXPIRED.

"Contracts must be considered as whole, each part thereof being construed in light of every other part and intention being gathered from whole instrument, taking it by four corners; and every part thereof should be given some effect." (*Hunt v. United Bank & Trust Co.* (Cal. 1930), 210 Cal. 108, 114.) Here, the "four corners" of the Settlement Agreement limit the City's obligations only to assessments relating to the DCBID "adopted by ordinance of the City Council on June 19, 2012." (Settlement Agreement at ¶ 2 and 6.) The only assessments the City must pay are those "set forth in an Engineer's Report and a Management District Plan" attached to the Petition in this matter, i.e., the 2012 Engineer's Report and the 2012 Distrcit Plan. (Settlement Agreement at ¶ 2 and Term 1(a)(ii).)

These terms are clear and unambiguous. Thus, no extrinsic evidence is needed to interpret the meaning of this agreement, although evidence might be needed to show whether any particular assessment was subject to the agreement. And here the evidence shows that the City has satisfied all such assessments, that no more such assessments can possibly made, and that the City has no further obligations under the agreement.

Paragraphs 1, 2 and 6 of the recitals and Settlement Term 1(a)(ii) require the City only to make payments with respect to assessments by the DCBID adopted by ordinance on June 19, 2012. The only such DCBID is the 2013 DCBID. (*See* Exhibit 1, Settlement Agreement at ¶ 2; Exhibits 1

and G). These assessments must also be set forth in the 2012 Engineer's Report and the 2012 District Plan. (See Exhibit 1 at ¶ 2; Exhibit 8 at p. 1; Exhibit F at p. 5.).

Thus, the terms of the agreement are clear. To meet these terms Petitioners must prove that the assessments they want paid are: (1) made by the DCBID adopted by Council on June 19, 2012; and (2) set forth in the 2012 Engineer's Report and District Plan. They cannot do so. The 2018 DCBID was adopted on June 7, 2017, and the assessments are not set forth in the 2012 Engineer's Report and the 2012 District Plan.

Petitioners sidestep these terms and instead argue that other language, relating to the "current formulation" of the DCBID, means that the City is bound to pay assessments relating to a different DCBID, one adopted by ordinance on June 7, 2017, and to pay assessments that were not discussed at all in the 2012 Engineer's Report and the 2012 District Plan. Instead of applying the terms of the agreement, Petitioners argue that this clause, standing alone, makes the Settlement Agreement bind the City "for so long as the Plaintiffs remain the owners of these properties." No ambiguity in the agreement could be construed such that the City is obliged to pay such assessments forever. This is well beyond the scope of the Settlement Agreement and outside of any reasonable interpretation of the agreement as written. The Court should rule in favor of the City.

A. THE SETTLEMENT AGREEMENT PROVIDES ALL THE TERMS NEEDED FOR ANY REASONABLE PERSON TO KNOW IT EXPIRED WITH THE 2013 DCBID.

Petitoners argue that they "reasonably" thought that the Settlement Agreement would last forever despite explicit language to the contrary. Assuming arguendo that the language limiting the Settlement Agreement to the 2013 DCBID is in some way ambiguous, this reading is not reasonable.

At the time of the agreement both Petitioners and the City were simply trying to find a way to satisfy Petitioners and the many members of the 2013 DCBID who desperately wanted the BID services. As Petitioners concede the parties never discussed future events such as the 2018 DCBID. Instead, the parties focused on dealing with the problem before them: the 2013 DCBID. Here, the only reasonable way to satisfy all parties was to pay the 2013 DCBID assessments during the course of its lifetime. Nothing more was contemplated or expressed in the Settlement Agreement because

nothing more was at issue. Because the 2013 DCBID ended on December 31, 2017, neither party had any need or interest to further discuss what would happen after December 31, 2017. Such things were not raised by the litigation and were not at issue.

Moreover, such a "reasonable belief" requires thinking that the Settlement Agreement provided for relief that litigation could not possibly provide. The court could have provided refunds of assessments from the 2013 DCBID, or disestablished the 2013 DCBID, or altered the DCBID by court order, but Petitioners could not have received any relief regarding assessments after December 31, 2017. Not only did they fail to seek any such relief, but because such assessments would be made by an as-yet uncreated BID there was no ongoing controversy for any court to address.

Thus, Petitioners wrongly claim that they reasonably believed the Settlement Agreement lacked an "explicit" end date. The end date is explicit: the expiration of the DCBID "adopted by City council on June 19, 2012." As Petitioners acknowledge, this DCBID ended by its terms on December 31, 2017, and both parties were well aware of that fact. The agreement only addressed assessments that would end in 2017, as set forth in the Engineer's Report and the District Plan. No reasonable person would think the agreement lasted in perpetuity under such circumstances.

Moreover, the City did indeed "broach the subject" of an "end date" as the Settlement Agreement was limited explicitly to the BID adopted by City Council on June 19, 2012, and to assessments that were described as ending with 2017. Petitioners appear to argue that the agreement should not only have explicitly applied to assessments that ended by definition in 2017, and to a DCBID that "all parties" knew ended in 2017, but also should have explicitly said that the agreement "ended" in 2017. Such language seems superfluous.

Similarly, Petitioners argue that they "reasonably" thought the agreement lasted forever because it addressed their claim that "tax-exempt" entities were immune to BID assessments. If so the agreement should at least hint at this. But instead the Settlement Agreement lasts "so long as Petitioners remain the owners of these properties" during the five-year term of the 2013 DCBID. (Settlement Agreement at ¶ 5.) Thus, under Petitioners' reading of the Settlement Agreement the City's obligations would last forever regardless of whether Petitioners operated as "tax exempt" entities or the lifetime of the 2013 DCBID. No reasonable person would think that the Settlement

Agreement protected Petitioners' interests as "tax-exempt" entities when the Settlement Agreement ignores that issue completely.

In any event, Petitioners are objectively wrong to think that this issue could have been settled forever in this litigation. Article XIIID requires that **all** special benefits be assessed, regardless of whether the assessee performs non-profit or for-profit activities. This determination is unique to each BID and cannot be determined for all time by challenging a single BID.

Thus, the Settlement Agreement (as Respondent reads it) gave Petitioners the maximum relief a court could have provided: freedom from assessments relating to the 2013 DCBID. It clearly and unambiguously applies only to the 2013 DCBID. Petitioners could not and almost certainly did not think that the agreement ran endlessly.

B. WHETHER THE 2018 DCBID "RENEWS" THE 2013 DCBID IS IRRELEVANT.

Petitioners argue that the 2018 DCBID merely "renews" the 2013 DCBID, and so "continues" the 2013 DCBID, and thus is not a "new" BID. They are wrong on what is "continuing" here, but the entire argument is completely irrelevant as the Settlement Agreement applies only to the DCBID "adopted" on June 19, 2012. Regardless of whether the 2018 DCBID "renews" the expired BID, the 2018 DCBID was not "adopted" on June 19, 2012.

Although extrinsic evidence is not needed to determine the meaning of the Settlement Agreement, it is needed to show that the City is not obliged to pay assessments relating to the 2018 DCIBD. The 2018 DCBID was adopted by City Council on June 7, 2017. (Declaration of Daniel M. Whitley, ¶ 9.) "Renewed" BIDs must be adopted by motion of the City Council just like BIDs completely unrelated to any other BID. (Streets and Highways Code § 36660). Thus, the City's obligations under the agreement turn on when the DCBID is "adopted" by City Council, not whether the BID is "renewed." This ends the analysis, as the 2018 DCBID (adopted on June 7, 2017) literally does not fall within the terms of the Settlement Agreement.

Moreover, "renewed" BIDS do not "continue" in the sense that Petitioners use the word, that they are a single entity that has existed for more than 20 years. The 2018 DCBID is the latest in a long line of DCBIDs, starting no later than 1997. (*See* Exhibit A). A DCBID has continued

providing services to the present. (*See* Exhibits A through F.) When formed, the successor DCBIDs were **all** referred to as a "renewal" of the expiring DCBID. (*See* Declaration of Daniel M. Whitley, ¶¶ 6, 8 and 9.) The successor DCBIDs had to be "renewal" BIDS under Section 36660 because funds were always transferred to the successor BID.

Thus, every DCBID except for the very first is a "renewal" of the first DCBID, and each "renewed" DCBID is an entirely new and different entity than the expired BID. A "renewed" BID, just like a "new" BID, is "established" upon Motion of the City Council. (Streets and Highways Code § 36660(a).) It did not exist prior to that action by the City. Various rules apply to any unused revenues from the expired BID. (Streets and Highways Code § 36660(b).) All of this makes sense only if the expired BID and the successor BID are entirely different entities; otherwise, there would be no need to "transfer" funds as the BID simply "continues" to exist as Petitioners argue. The BIDs "continue" in the sense that a series of successor BIDS have continued to provide similar services to a similar constituents over the years, but do not "continue" in the sense that they are a single entity. They "continue" to provide services in the sense that the President of the United States has "continued" to provide "President" services, although no individual President has "continued."

This language is perfectly clear and unambiguous. A number of BIDs have formed over the years all called the "DCBID," and a DCBID was expected to exist in the future after the 2013 DCBID expired. The Settlement Agreement limits itself only to assessments made by the DCBID "adopted by ordinance of the City Council on June 19, 2012," regardless of whether any DCBID is considered "renewed" or newly established.

Thus, the language limiting the Settlement Agreement to the DCBID adopted by City Council on June 19, 2012, is a clean and simple way to limit the scope of the settlement to the single five-year term of the 2013 DCBID. Adding further language ending the City's obligations on December 31, 2017, as Petitioners now argue for, is superfluous and would have made the Settlement Agreement ambiguous and confusing (or more ambiguous and confusing, if some ambiguity does exist). What happened if the 2013 DCBID was disestablished and a new BID created? What happened if a new BID was set for vote before December 31, 2017? What would have happened if the 2018 DCBID

had begun collecting assessments in 2017? These are clearly settled by the agreement as written, but ambiguities would arise if the agreement had been written as Petitioners now suggest.

Moreover, Petitioners' "renewal" argument requires a reader to ignore the language in Recital ¶ 2 limiting the assessments to those set forth in the 2012 Engineer's Report and the 2012 District Plan. The assessments starting in 2018 are **not** set forth in those documents, and so the City is not obliged to pay assessments relating to the 2018 DCBID regardless of whether it is a "renewal."

C. THE SETLEMENT AGREEMENT WAS JOINTLY DRAFTED AND CANNOT BE CONSTRUED AGAINST THE CITY.

There is no basis to find that the City was the sole drafter of the Settlement Agreement and so no basis to construe any ambiguities against the City. A contract cannot be construed against either party when it results from joint drafting by both parties. (*Mitchell v. Exhibition Foods* (1986) 184 Cal. App. 3d 1033, 1042.) As Petitioners own evidence shows, the City created a first draft of the agreement and then provided an opportunity, and indeed begged, for Petitioners to make any changes they deemed necessary. Should Petitioners have wanted the agreement to apply to "renewed" DCBIDs, regardless of their dates of adoption, Petitioners should have asked for such language in the agreement. This jointly-drafted settlement agreement that cannot be construed against either party.

If anything the Court should construe any ambiguities in the Settlement Agreement in favor of the City. An ambiguous contract term should be interpreted in favor of the party the term would most benefit. (*Mitchell* at 1042-1043.) Here, the Settlement Agreement limited the City's obligations to assessments made with respect to the 2013 DCBID. As in *Mitchell*, this term has far greater benefit to the City than to Petitioners. These provisions could only benefit the City, as they limit the City's obligations but leave Petitioners free to challenge future assessments if they wish. No court should construe a contract to last "forever" without some explicit language to that effect.

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D. IF PETITIONERS ARE CORRECT THAT THE SETTLEMENT AGREEMENT MEANT TO CONTINUE AFTER THE EXPIRATION OF THE 2013 DCBID, THE COURT SHOULD ENTER JUDGMENT IN BS170127 FOR THE CITY.

Taking Petitioners at their word, the Settlement Agreement prohibits Petitioners' current lawsuit, Case No. BS170127, but imposes no further obligations on the City. If the agreement applied to all DCBIDS, including "renewed" DCBIDS, the agreement literally would mean that Petitioners: (1) are not entitled to any further payments from the City; and (2) cannot challenge any future DCBID, including the 2018 DCBID. This seems like a ridiculous result, but shows why Petitioners' construction must be wrong.

The Settlement Agreement releases the City "of and from any obligations, liability, guarantees, actions, causes of actions . . . for, from, upon, under, on account of, growing, or arising out of, or related to the subject matter the Litigation between the parties." (Settlement Agreement, (c)(1). Petitioners thus argue that the propriety of the 2018 DCBID and all successor DCBIDs are among the issues set forth in this lawsuit, BS138146.[1] (*See* Motion at p. 9-10 (Petitioners argue that this lawsuit brought claims relating to the 2018 DCBID).) Therefore, Petitioners argue that they released the City from any claims or liability relating to the propriety of the 2018 DCBID because such claims related to the subject matter of this lawsuit, as set forth in their Complaint in BS138146.

But that does not expand the City's obligations under the Settlement Agreement. Although the 2018 DCBID is among the matters released by Petitioners, the City still agreed to pay only assessments relating to the "DCBID adopted by ordinance on June 19, 2012." Thus, regardless of the length of the Settlement Agreement, the City is obliged only to satisfy payments with respect to the 2013 DCBID. That BID has ceased to exist, and so the City has no further obligations under the Settlement Agreement.

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[1] The City would never have made this argument on its own as it seems abundantly clear that this agreement has nothing at all to do with any BID operating after December 31, 2017. Because Petitioners opened the door, however, the City feels free to walk on in. If this lawsuit did, indeed, raise issues relating to the 2018 DCBID as Petitioners' argue, Petitioners released any claims against the City relating to the 2018 BID.

Although the City satisfied its obligations under the agreement, Petitioners are not released from theirs. Petitioners released the City from any and all actions relating to the 2018 DCBID, and its current action (Case No. BS170146) is such an action. This is a far more reasonable reading of the Settlement Agreement than Petitioners'. Taking into account the hazards of litigation, the parties could have reasonably thought that exempting Petitioners from a single term of the DCBID would compensate it for any current and future improprieties in DCBIDs. It is quite common for such cases to be settled by "splitting the baby" in that manner.

But although this would be a reasonable way to interpret an ambiguous agreement, it seems well beyond the clear language of the Settlement Agreement. The agreement clearly meant just what it said: that it addressed only the 2013 DCBID. If, however, Petitioners wish to argue that the Settlement Agreement applied in perpetuity, the City is happy to take them at their word. If the Court is persuaded by Petitioners' arguments, however, the City believes the only reasonable decision is to grant judgment in favor of the City in the current action (Case No. BS170146).

III. THE "CURRENT FORMULATION" OF THE 2018 DCBID IS IRRELEVANT AND IN ANY EVENT DEVIATES FROM THE 2013 DCBID.

A. THE "CURRENT FORMULATION" LANGUAGE ONLY APPLIES TO THE 2013 DCBID.

By its plain language the Settlement Agreement obliged the City only so long as the 2013 DCBID existed, but the City's obligations could cease before the expiration of the 2013 DCBID if its "current formulation" changed. (Settlement Agreement at ¶ 5.) Again, this seems straightforward, clean and unambiguous.

Petitioners argue that the phrase "the DCBID continues in its current formulation" is ambiguous, and parole evidence shows that it meant "so long as RHF remains the owner of the subject properties, and so long as the DCBID continues in existence, RHF will receive reimbursements from the City." (Motion at p. 6). Regardless of any ambiguity in the "current formulation" language, however, this paragraph would only apply to an assessment by a DCBID adopted by council on June 19, 2012, which none of these assessments are. In any event, any ambiguity here would not extend the City's obligations past December 31, 2017.

First and foremost, this argument assumes that the 2013 DCBID "continues." It does not. Petitioners appear to think that because services will continue the 2013 DCBID itself is continuing. (Motion at p. 8.) The Settlement Agreement does not mention the continuation of "services," however, but the continuation of the 2013 DCBID. And that BID has ceased to exist. Petitioners used to receive services from the 2013 DCBID, but will in the future receive services from the 2018 DCBID. Services continue, but provided by an entirely different thing, the 2018 DCIBD.

Petitioner's entire argument relies on ignoring what should "continue." The "DCBID" that must continue is the one set forth in the Settlement Agreement, i.e., "the DCBID adopted by City Council on June 19, 2012." Petitioners argue that a "DCBID" has existed since 1988 and so a DCBID has "continued" since that date, but those "DCBIDs" are **not** the DCBID "adopted by City Council on June 19, 2012." **"A DCBID"** has existed since at least 1997, but that does not mean that **"the DCBID"** set forth in the Settlement Agreement has existed since then or continues to so exist. To the contrary, "the" DCBID adopted by council on June 19, 2012, has ceased to exist; it does not "continue." Thus, the "current formulation" language applies only to the 2013 DCBID, and has nothing whatsoever to do with the 2018 DCBID.

Thus, there is no ambiguity here that requires extrinsic evidence. The "DCBID" that must continue is the 2013 DCBID. And it does not. It ceased, as Petitioners concede, on December 31, 2017. To the extent any ambiguity exists in Paragraph 5, it is amply cleared up by the references to the adoption date of the BID and to the assessments set forth in the 2012 Engineer's Report and District Plan.

In context and applying all of the Settlement Agreement's terms the meaning of this paragraph is perfectly clear. The City agreed to satisfy Petitioners' assessments so long as the 2013 DCBID continued, but if the 2013 DCBID was reformulated the City's obligations would end earlier. This term does not extend the City's commitments, but potentially limited them. Petitioners turn this phrase on its head and construe this exactly the opposite of what it unambiguously says.

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B. THE 2018 DCBID DOES NOT USE THE "CURRENT FORMULATION" OF THE 2013 DCBID.

In any event it appears that Petitioners really argue that whatever "current formulation" means, the 2018 DCBID is close enough to the 2013 DCBID that it uses the "current formulation." With respect to a BID, the "formulation" must at a minimum include the methodology by which the BID determines and apportions the costs of special benefits. Thus, the "current formulation" must use the same apportionment methodology as the DCBID adopted by City Council on June 17, 2013.

But the 2018 DCBID does not use this "current formulation." Most importantly, the 2013 DCBID provides for assessments to pay the costs incurred between January 1, 2013, and December 31, 2017, a five year term. The 2018 DCBID, in contrast, provides for assessments to pay costs incurred after 2017, and for a ten year term. The operative dates and the length of payment terms are clearly a substantial part of any methodology. If the 2013 DCBID made assessments for (say) 2021, one would think Petitioners would object as this is not the "current formulation" set forth in the 2012 Engineer's Report and District Plan and would claim Petitioners are not required to pay it. Therefore, for this reason alone the 2018 DCBID deviates from the "current formulation" of the 2013 DCBID.

The 2018 DCBID contains another key change from the 2013 DCBID: it quantifies and provides for the payment of a general benefit. (Exhibit 9, 2017 Engineer's Report at p. 20-26.) The 2013 DCBID determined that there was no general benefit from its services and assessed 100% of the costs for the 2013 DCBID's services to properties in the DCBID. (Exhibit 8, 2012 Engineer's Report at p. 16-18.) The 2018 DCBID, however, requires the City to pay the general benefit provided by the DCBID. (Exhibit 9, 2017 Engineer's Report at p. 24-26). This "special benefit" determination is part of the Engineer's apportionment methodology, as otherwise there is nothing to apportion by the "square footage" method Petitioners discuss.

Petitioners ignore this part of the methodology and instead focus entirely on how the costs of special benefits are apportioned once such costs are determined (through the "square footage" method). This is of course only part of the methodology and only part of the BIDs formulation. Equally important is how the costs of special benefits are determined in the first place. Here, one

BID apportions 100% of the costs of its services, while the other only apportions the cost of special benefits. This is the very substance of the DCBID's formulation and cannot be simply ignored.

Petitioners point out many similarities, but ignore these two pivotal differences. Two BIDs can have any number of similarities without using the same formulation. Adding 2+3+4+5 is almost exactly the same formulation as adding 1+2+3+4+5, using almost exactly the same numbers and operants, but the two equations give different results – because they are a different formulation. It does not matter that they give "nearly" the same result.

Just so here. The 2018 DCBID may use exactly the same "square footage" apportionment formula for that part of its methodology, but it provides a different result because its overall methodology is different. Only the costs of the special benefits are apportioned. No reasonable person would think the BIDs use the same formulation, despite their similarities.

IV. THE CITY IS ENTITLED TO ATTORNEYS FEES.

Under subpart (h) of the Settlement Agreement the prevailing party is entitled to its attorneys fees and costs in "any proceeding arising under this Agreement." The City will be the prevailing party in this matter, as Petitioners have absolutely no right for the relief they seek. Mr. Whitley spent 21.5 hours preparing for and drafting this Opposition, and expects to spend another 5 hours reviewing the Reply and preparing for the hearing on this matter. Mr. Whitley's experience and background is roughly the same as Mr. Stephen Raucher, who claimed a billing rate of $625 per hour in this matter. Therefore the City is entitled to attorneys fees of $16,406.25, to be proven at the hearing.

V. CONCLUSION.

The Settlement Agreement is clear and unambiguous. The agreement requires the City to satisfy Petitioners' assessments with respect to the 2013 DCBID, and nothing further. The City paid all such assessments. The 2013 DCBID ceased to exist on December 31, 2017, as contemplated by all parties, and so can no longer make any assessments. Therefore, the City has satisfied all of its obligations under the Settlement Agreement. The 2013 DCBID has ceased to exist.

The Settlement Agreement clearly and unambiguously imposes no obligations at all regarding the 2018 DCBID or any other BID, and so Petitioners are not entitled to any further relief under the Settlement Agreement. Should the Court be persuaded that the agreement is ambiguous, however,

and does address issues that could arise after December 31, 2017, the Court should enter judgment in favor of the City in Case No. 170127 because it relates to claims released by Petitioners in the Settlement Agreement. But either way the City has no further obligations to Petitioners because the agreement under no circumstances requires the City to take any action after the 2013 DCBID terminates.

Because the City is the prevailing party the City is entitled to its attorneys fees of $15,468.75, plus any additional fees incurred over what the City estimates from this point forward.

Dated: January 17, 2018

Respectfully submitted,

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DANIEL M. WHITLEY
Attorneys for the City of Los Angeles

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PROOF OF SERVICE

I, Cynthia Marchena, declare as follows: I am employed in the County of Los Angeles, California. I am over the age of 18 and not a party to the within action. My business address is 200 N. Main St., Rm. 920 C.H.E., and Los Angeles, California 90012.

On January 17, 2018, I served the foregoing document described as: **OPPOSITION TO MOTION TO ENTER JUDGMENT; REQUEST FOR ATTORNEYS FEES,** on the interested parties in this action by placing a **[X]** true copy [ ] original copy thereof enclosed in a sealed envelope addressed as follows:

Timothy D. Reuben, Esq.
REUBEN RAUCHER & BLUM
12400 Wilshire Blvd., Ste. 800
Los Angeles, CA 90025

[ ] **MAIL** - I caused such envelope to be deposited in the United States mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

[x] BY PERSONAL SERVICE - ( ) I delivered by hand, or (x) I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

[ ] **BY OVERNIGHT COURIER** - I caused the above-referenced document(s) to be delivered to DHL, an overnight courier service, for delivery to the above addressee(s).

[ ] **BY FACSIMILE** - I caused the above-referenced document(s) to be transmitted to the above-named person(s).

[ ] **Federal** - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

[x] State - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 17, 2018, at Los Angeles, California.

Cynthia Marchena